

**Amendment No. 1 to SB2164**

**Woodson**  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 2164**

**House Bill No. 2215\***

By deleting all of the language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-4-1004(a), is amended by deleting the language "ten (10) mills on each cigarette" and by substituting instead the language "two and five hundredths cents (2.05¢) on each cigarette".

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by deleting § 67-4-1005 in its entirety and by substituting instead the following:

Section 67-4-1005. The rate on all other tobacco products, including, but not limited to, cigars, cheroots, stogies, beedies, bidis, manufactured tobacco and snuff of all descriptions whether made of tobacco or any substitute for tobacco, shall be fifteen percent (15%) of the wholesale cost price

SECTION 3. Tennessee Code Annotated, Section 67-4-1025(a), is amended by deleting the language "All of the taxes on tobacco products collected under this part shall be applied in the following manner:" and by substituting instead the following language:

Except as provided in subsection (d), all of the taxes on tobacco products collected under this part shall be applied in the following manner:

SECTION 4. Tennessee Code Annotated, Section 67-4-1025(b), is amended by deleting the language "The revenue from the tax on cigarettes shall be used exclusively for public education, grades one through twelve (1-12)," and by substituting instead the following language:

Except as provided in subsection (d), the revenue from the tax on cigarettes shall be used exclusively for public education, grades one through twelve (1-12),

SECTION 5. Tennessee Code Annotated, Section 67-4-1025, is amended by adding the following language as a new subsection:

(d) Revenue collected from the increase in taxes on tobacco products generated by the provisions of Sections 1 and 2 of this act shall be applied as follows:

(1) Nine percent (9%) of the amount so collected shall be allocated to the department of agriculture for grants to tobacco farmers;

(2) Twelve percent (12%) of the amount so collected shall be allocated to general fund; provided that such moneys shall be used exclusively for community enhancements and shall not be expended unless appropriated for such purpose in the general appropriations act;

(3) Seventy-five and one-half percent (75.5%) of the amount so collected shall be allocated to the general state school fund; provided that such moneys shall be further allocated to increase the state share of the instructional positions component of the basic education program formula to at least seventy-five percent (75%). Such funds shall be appropriated by the general appropriations act in accordance with the provisions of this subdivision; and

(4) Three and one-half percent (3.5%) of the amount so collected shall be allocated to the department of health for home and community-based care programs for the elderly as otherwise established by law and appropriated in the general appropriations act.

SECTION 6. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following language as a new section to be designated as follows:

Section 67-4-1031.

(a) As used in this section, "nonparticipating manufacturer" has the same meaning as ascribed in § 67-4-2601(6).

(b)

(1) As used in this section, "cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(B) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(C) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (b)(1)(A);

(2) "Cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For the purposes of this subsection (b)," 0.09 ounces of "roll-your-own" tobacco constitutes one (1) individual "cigarette."

(c) Every nonparticipating manufacturer shall pay to the department for exclusive state purposes an equity assessment, in addition to all other assessments, fees, or taxes, upon each package of nonparticipating manufacturer cigarettes. The rate of the equity assessment shall be twenty-five (25) mills on each cigarette. The department shall collect the equity assessment each month directly from the nonparticipating manufacturer based on information received by the department under subsections (e) and (f). Except as otherwise provided in this section, the equity assessment shall be collected, paid,

administered, and enforced in the same manner as the tax imposed by § 67-4-1002.

(d) The purposes of this equity assessment are:

(1) To prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering their cigarettes for sale substantially below the price of cigarettes of other manufacturers;

(2) To protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs and services funded in whole or in part by payments to the state under the master settlement agreement, as defined in § 47-31-102 and to recoup settlement payment revenue lost to the state as a result of nonparticipating-manufacturer cigarette sales;

(3) To fund enforcement and administration of title 47, chapter 31, and title 67, chapter 4, part 26, related nonparticipating-manufacturer legislation, and the equity assessment imposed by this section, including reasonable administrative costs incurred by persons subject to subsection (f) by reason of the requirements of that subsection; and

(4) To fund other such purposes as the general assembly may determine.

(e) A nonparticipating manufacturer whose cigarettes are being offered for sale in this state on the effective date of this section shall pay the equity assessment imposed by this section within thirty (30) days after the effective date of this section. If cigarettes of a nonparticipating manufacturer are not being offered for sale in this state on the effective date of this section, then the nonparticipating manufacturer, before its cigarettes may begin to be offered for sale in this state, shall prepay the equity assessment imposed by this section for the number of cigarettes of the nonparticipating manufacturer that the

department reasonably projects will be sold in the first calendar month in which cigarettes of the nonparticipating manufacturer are sold in this state. The prepayment amount shall be determined by multiplying twenty-five (25) mills times the number of cigarettes that the department reasonably projects that the nonparticipating manufacturer will sell in this state in that first calendar month, or fifty-thousand dollars (\$50,000), whichever is more. The department may require a nonparticipating manufacturer to provide any information reasonably necessary to determine the equity assessment payment amount and, in the case of prepayment, the commissioner shall establish procedures providing for reimbursement to nonparticipating manufacturers if actual sales are less than sales as projected by the department and for additional payment by nonparticipating manufacturers if actual sales are greater than sales as projected by the department.

(f) Persons authorized to affix stamps or stamp-alternatives shall file with the department a monthly report by the twentieth day of each month stating the number and denominations of stamps or stamp-alternatives affixed to individual packages of nonparticipating-manufacturer cigarettes, by manufacturer and brand family, sold by the person for each place of business in the preceding month. Persons failing to comply with this subsection shall be subject to the penalties specified in § 67-4-1016.

(g) Cigarettes of a nonparticipating manufacturer that has not paid the equity assessment imposed by this section shall be treated as cigarettes of a nonparticipating manufacturer that has not provided the certification required by § 67-4-2602(a), or any successor legislation, and shall be treated as tobacco products to which the required stamps has not been affixed and upon which the applicable tobacco taxes have not been paid and shall not be included in the directory specified in § 67-4-2602(b).

SECTION 7. The revenues received pursuant to the assessment levied by Section 6 of this act are hereby earmarked for the purpose of funding statewide health programs as may be provided in the general appropriation act.

SECTION 8. Tennessee Code Annotated, Title 43, Chapter 1, Part 1, is amended by adding the following language as a new section:

Section 43-1-114.

(a) The commissioner of agriculture is authorized to establish a grant program for tobacco farmers.

(b) Such program shall be funded with moneys allocated for such purpose pursuant to § 67-4-1025(d); provided that no funds shall be expended under the provisions of this section unless specifically appropriated for such purpose in the general appropriations act.

SECTION 9.

(a) The department of revenue is authorized to promulgate rules and regulations as the department deems necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Notwithstanding the provisions of §§ 4-5-208 and 4-5-209 or any other provision of law to the contrary, the department of revenue is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 10.

(a) The department of agriculture is authorized to promulgate rules and regulations as the department deems necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Notwithstanding the provisions of §§ 4-5-208 and 4-5-209 or any other provision of law to the contrary, the department of agriculture is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 11. No provision of this act shall be construed as prohibiting any activity otherwise authorized pursuant to the tobacco litigation master settlement agreement entered into by Tennessee and certain other states, United States territories and possessions, and participating tobacco manufacturers, dated November 23, 1998.

SECTION 12. For the purpose of promulgating rules and regulations, Sections 9 and 10 of this act shall take effect upon becoming a law, the public welfare requiring it. All other Sections of this act shall take effect July 1, 2007, the public welfare requiring it.